



Kansas Corporation Commission

Kathleen Sebelius, Governor John Wine, Chair Cynthia L. Claus, Commissioner Brian J. Moline, Commissioner

January 23, 2003

Chairman Michael Powell
Commissioner Kevin Martin
Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Jonathan Adelstein
445 12th Street SW, Portals II Building
Washington, D.C. 20544

RE: Notice of Written Ex Parte Comment – Electronically filed in the proceeding captioned: *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket Nos. 01-338, 96-98 and 98-147, Notice of Proposed Rulemaking, FCC 01-361 (rel. Dec. 20, 2001).

Dear Commissioners:

As the Commission works to finish the critical Triennial Review, the Kansas Corporation Commission (“KCC”) writes to urge the Commission to preserve a state’s flexibility to determine that line sharing (access to the HFPL) be designated on the state’s UNE list.

On January 14, 2003, the KCC issued Order 19 in Docket Number 01-GIMT-032-GIT: *In the Matter of the General Investigation to Determine Conditions, Terms and Rates for Digital Subscriber Line Unbundled Network Elements, Loop Conditioning, and Line Sharing*. In this Order, we find that Kansas will benefit from the setting of reasonable prices and provisioning of UNEs that competitive local exchange carriers need to deploy DSL services. We concluded that:

- (1) Packet-switching capability is to be unbundled on a nondiscriminatory basis where SBC-KS has deployed Project Pronto architecture to offer DSL services.
- (2) The end-to-end broadband-capable loop, over which SBC-KS makes its broadband service offering, is designated a UNE in those locations

in Kansas where SBC-KS has deployed its fiber-fed, NGDLC-equipped Project Pronto architecture.

- (3) In central offices where SBC-KS has installed splitters to provide access to the HPFL through line sharing, SBC-KS must provide the splitter functionality on a nondiscriminatory basis to any requesting LEC.

In deciding issues about DSL and the splitter functionality, the KCC was mindful of the Court's criticism in *U.S. Telecom Ass'n v. F.C.C.*, 290 F.3d 415 (D.C. 2002), that the FCC in its orders on line sharing did not fully consider the availability of alternative offerings in the competitive broadband services market. Yet the KCC has no authority under state or federal law to investigate what broadband offerings exist in other modes. The KCC reached its decision based upon its obligation under the Kansas Telecommunications Act to promote competition among telecommunications carriers and the goal of the Federal Telecommunications Act to promote competition in telecommunications markets. If state commissions are to account for inter-modal services in deciding an issue regarding the telecommunications industry, please keep in mind that we need guidance about how reliable information can be gathered.

The KCC acknowledges that DSL service can be provided through several arrangements; however, the greatest cost savings for consumers is realized when the loop to the customer premises is utilized to provide both voice and data service over different frequencies. Line sharing permits Kansas consumers to receive a high speed data service at a reasonable price. As the FCC recognized in its Line Sharing Order, if competitors are required to purchase a second loop to provide DSL service, competitors will not have the ability to effectively compete in the residential market against the incumbent phone companies who will retain the right to provide voice and data on the same line and line share with their advanced service affiliate. The end result will likely be a broadband market characterized as a duopoly, with the incumbent phone companies and cable providers controlling the broadband market. Thus, the KCC urges the Commission to permit states to retain flexibility in designating line sharing of the HFPL as a UNE.

The KCC believes that competitive pressure is critical to further spur the adoption of broadband services by consumers, both in Kansas and across the nation. As of December 31, 2001, 13% of Kansas households subscribed to some type of high speed data service. Competitive DSL service providers report serving 15,460 access lines in Kansas as of December 31, 2001, while SBC-KS, through its data affiliate ASI, serves 24,484 access lines. Removal of a state's flexibility to add line sharing to the list of UNEs could deal a fatal blow to the remaining competitive DSL providers, reduce the availability of benefits of broadband competition to consumers, reduce the degree of innovation in the broadband market, and increase the price that consumers must pay for broadband access.

As you know, there are significant differences between states in availability of competitive services. One size will not necessarily fit all. We believe that state

commissions are best positioned to determine what UNEs need to be made available in any particular state and we urge you to ensure that the states retain the authority to do so.

Sincerely,

John Wine, Chair

Cynthia L Claus, Commissioner

Brian J Moline, Commissioner

cc:

Congressional Delegation

Senator Pat Roberts

Senator Sam Brownback

Representative Jerry Moran

Representative Jim Ryun

Representative Dennis Moore

Representative Todd Tiahrt

Kansas Legislature

Senator Karin Brownlee, Senate Commerce Committee Chairperson

Representative Carl Holmes, House Utilities Committee Chairperson

NARUC

Brad Ramsey

Jessica Zufolo